Office Supreme Court, U. S.
FILED.
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JAMES H. McKENNEY,
CLERK.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 45.

JESSIE E. THOMPSON, APPELLANT,

vs.

CHARLES N. THOMPSON.

PETITION FOR CERTIORARI.

WM. M. LEWIN,
Attorney for the Petitioner.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1912.

No. 45.

JESSIE E. THOMPSON, APPELLANT,

vs.

CHARLES N. THOMPSON.

To the Honorable the Supreme Court of the United States:

The petition of Jessie E. Thompson, the subscriber, respectfully represents:

1. That she is the appellant in the above-entitled case.

2. That her cause of action is meritorious.

3. That she is advised that there is doubt of this court's jurisdiction of said case upon appeal.

In view of such doubt, and the premises further considered, the petitioner prays as follows:

1. That the writ of certiorari may be duly granted, if it shall be determined that this court is without jurisdiction upon such an appeal.

And for such other and further relief as may be proper.

JESSIE E. THOMPSON.

WM. M. LEWIN,
Attorney for the Petitioner.

DISTRICT OF COLUMBIA, *To wit:*

I, Jessie E. Thompson, on oath say that I have read the foregoing petition by me subscribed and know the contents thereof; that the matters and things therein stated of my own knowledge are true and those stated upon information and belief I believe to be true.

JESSIE E. THOMPSON.

Subscribed and sworn to before me, in said District, this 28th day of October, A. D. 1912.

RUTLEDGE WILLSON,
Notary Public, D. C.

APPELLEE'S

BRIEF

12

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Supreme Court of the United States

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No. 45.

JESSIE E. THOMPSON, *Appellant*,

vs.

CHARLES N. THOMPSON.

BRIEF ON BEHALF OF APPELLEE.

A. E. L. LECKIE,
JOSEPH W. COX,
JOHN A. KRATZ, JR.,
Attorneys for Appellee.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1912.

No. 45.

JESSIE E. THOMPSON, *Appellant*,

vs.

CHARLES N. THOMPSON.

BRIEF ON BEHALF OF APPELLEE.

STATEMENT.

The appeal in this cause is from a judgment of the Court of Appeals of the District of Columbia, reversing a decree of the Supreme Court of the District of Columbia in favor of the appellant upon a suit for maintenance brought by her against her husband the appellee (R., p. 508).

The parties were married on the seventh day of December, 1905, in the District of Columbia, and with the excep-

tion of some short periods of separation, lived together as husband and wife until the 13th day of June, 1907 (R., p. 2).

The husband was born in Loudoun County, Virginia, which he still claims as his domicil (R., p., 5, 21).

The testimony shows that he is a duly registered and qualified voter of that county; that he owns property there; that he has served on juries there; that he has always spent his time there when he was not actively employed in his school work, and that he frequently returned in the course of school terms to look after his business in Virginia.

He is a teacher by profession, and for several years past has been Principal of the Jefferson School in the city of Washington, District of Columbia, where he has lived during the school terms. (Complainant's Bill, R., p. 2; Defendant's answer, R., pp. 5 and 6; also R., p. 21.)

On the 29th day of July, 1907, the appellant filed her bill for maintenance against the appellee. In her said bill she charged the appellee with treating her with brutal and almost unexampled cruelty, beginning the day after their marriage and continuing almost uninterruptedly while they were living together, with increasing frequency and violence until the 13th day of June, 1907, when she was compelled to leave him and is afraid to return to him (see bill, R., pp. 2 and 3).

On the 3d day of September, 1907, the husband brought a suit in the Circuit Court of Loudoun County, Virginia, for a divorce *a mensa et thoro*, in the course of which, on the 16th day of September, he filed a bill in said Court charging the wife with having, on the 13th day of June, 1907, willfully abandoned his bed and board and deserted him without any cause whatsoever, and nothwithstanding his repeated entreaties and endeavors to induce her to return, she had refused to do so. Publication having been had, and a personal notice of the suit given to the appellant (R., p.

19), the Virginia Court proceeded, after the taking of testimony, to enter a decree in favor of the appellee, granting him a divorce *a mensa et thoro* and divesting each of the parties of all marital rights in the property of the other (R., p. 24).

On return of the husband to the District of Columbia in the fall of 1907, he was served with process in the suit filed by the wife here, and thereupon filed his plea in bar, setting up the Virginia decree and the proceedings upon which it was rendered as a bar to the appellant's suit in this District (R., pp. 17-24).

Upon the hearing of the plea, it was overruled by the Supreme Court of the District, and he was allowed 15 days in which to answer the bill (R., p. 25).

Thereupon, the appellee answered said bill and in his answer set up that his domicil as well as the matrimonial domicil of the parties was in Loudoun County, Virginia. He denied the charges of cruelty made against him; asserted that the charges brought against him were false; that he had done all he reasonably could to supply her needs; that when she had deserted him without cause on various occasions, he had gone for her and besought her to return, being compelled on one of said occasions to turn over to her $600.00 of dividend-bearing stock in order to get her to do so. He denied that he has made any illegal or unnatural demands upon her, or that he had ever cruelly treated her. He alleged that during the time they lived together she greatly neglected her household duties so that it was necssary for him to prepare his own as well as her meals, and to do practically all of the household work; that after she had deserted him he besought her to return, and that in order to avoid the notoriety of any kind of litigation, he had offered and was willing to pay her $60.00 a month for her support, but she threatened and declared that she would file suit against him unless he paid her $100.00 a month;

that thereupon she filed suit against him in which she maliciously and falsely charged the matters contained in her bill; that she further instituted a suit in damages against him for $70,000 (Thompson *vs.* Thompson, 218 U. S. 611); that she went to the members of the Board of Education, District of Columbia, by whom he was employed, and attempted to so prejudice them against him that he would be compelled to resign or be dismissed as Principal of one of the public schools. (Her mother instituted a further suit against him for $20,000, (R., p. 159). That when he realized the impossibility of a reconcilliation, or of meeting the extravagant demands she made upon him, and that she was bent upon ruining him, he filed the suit for separation at their matrimonial domicil, in which the decree was rendered, upon which he relies as a bar to this proceeding.

After the taking of testimony upon the bill and answer, in the maintenance proceeding in the District, the Court entered a decree in favor of the appellant, awarding her the care and custody of the child, which was born on November 24, 1907, requiring appellee to pay the sum of $75.00 per month as maintenance, and the sum of $500.00 as counsel fees, from which decree an appeal was taken to the Court of Appeals of the District of Columbia. In that Court the husband contended that the court erred—

1. In overruling the plea setting up the Virginia decree as a bar to the action for maintenance.

2. In holding that the wife is entitled to maintenance, notwithstanding the decree of the Virginia Court.

3. In holding, upon the merits of the case as disclosed by the testimony, that the wife is entitled to maintenance. (R. p. 496.)

The Court of Appeals on April 5, 1910, rendered its decision, reversing the decree of the Supreme Court of the District of Columbia, and remanded the cause to said Court with directions to enter an order vacating the decree and

dismissing the bill. (R., p. 503). The wife then moved for an appeal to this Court, which was denied by the Court of Appeals, (R., p. 508), after which an appeal to this Court was allowed by the Chief Justice. (R., p. 509).

I.

This Court is Without Jurisdiction.

Before discussing the questions raised by the Appellant's Assignments of Error in this Court, we invite the Court's attention to its lack of jurisdiction to hear this cause. The appeal is based upon Section 8 of the Act of February 9, 1893, entitled "An Act to Establish a Court of Appeals for the District of Columbia, and for other Purposes," which reads as follows:

> "Sec. 8. That any final judgment or decree of the said Court of Appeals may be re-examined and affirmed, reversed, or modified by the Supreme Court of the United States, upon writ of error or appeal, in all causes in which the matter in dispute, exclusive of costs, shall exceed the sum of five thousand dollars, in the same manner and under the same regulations as heretofore provided for in cases of writs of error on judgment or appeals from decrees rendered in the Supreme Court of the district of Columbia; and also in cases, without regard to the sum or value of the matter in dispute, wherein is involved the validity of any patent or copyright, or in which is drawn in question the validity of a treaty or statute of or an authority exercised under the United States." (27 Stat. 436.)

It has long been established by this Court that in order to confer jurisdiction under this statute, the matter in dispute must be money, or some right the value of which can be estimated in money. Furthermore, the value must be *actual* value—not a value based upon speculation on possibilities.

Barry v. *Mercein*, 5 How. 103.
Kurtz v. *Moffitt*, 115 U. S. 487.
Durham v. *Seymour*, 161 U. S. 235.
Huntington v. *Saunders*, 163 U. S. 319.
Foster's Fed. Practice, Vol. 1, 4th Ed., p. 87.

In *Kurtz vs. Moffitt, supra*, Mr. Justice Gray, in construing the act of March 3, 1875, (18 Stat. 470,) quoted with approval the following from the opinion of Chief Justice Taney in *Barry* v. *Mercerin, supra*, (p. 495):

> "In order, therefore, to give us appellate power under (the 22nd section of the Judiciary Act of 1789,) the matter in dispute must be money, or some right, the value of which in money can be estimated and ascertained." "The words of the Act of Congress are plain and unambiguous. They give the right of revision in those cases only where the rights of property are concerned, and where the matter in dispute has a known and certain value, which can be proved and calculated, in the ordinary mode of a business transaction. There are no words in the law, which by any just interpretation can be held to extend the appellate jurisdiction beyond those limits, and authorize us to take cognizance of cases to which no test of money can be applied."

Tested by the settled rule above stated, we submit that the Court is without jurisdiction. The decree of the Supreme Court of the District of Columbia, awarding maintenance and counsel fees in its material part is as follows:

> "That the defendant, Charles N. Thompson, pay to the said complainant for the maintenance of herself and the said child the sum of Seventy-five Dollars a month, and forthwith the further sum of Five Hundred Dollars for counsel fees in this cause; and further that the said defendant pay the costs of this suit." (R., p. 486.)

It is apparent on the face of the decree that the amount involved does not exceed $5,000.00, since it simply provides that the appellee shall pay to the appellant $75.00 a month and $500.00 for counsel fees. But the appellant seeks by affidavits to show that the expectancy of the appellee's life is twenty-five years, (R., p. 506), and that by July 15, 1914, the monthly payments would amount to $4,575.00, which, together with the $500.00 attorney's fee, would make the matter in dispute exceed $5,000.00 (Appellant's brief, p. 11). This conclusion of counsel is arrived at, of course, by speculating on possibilities, which this Court has always heretofore refused to indulge in. That either the appellee or appellant will live long enough to cause the monthly payments to aggregate more than $5,000.00 is pure speculation. Furthermore, the decree in this case may be modified or rendered inoperative, for, as stated by this Court in *Audubon vs. Schufeldt*, 181 U. S., 575, 578, quoting with approval from 6 App. D. C. 233:

> "The allowance of alimony is not in the nature of an absolute debt. It is not unconditional and unchangeable. It may be changed in amount, even when in arrears, upon good cause shown to the Court having jurisdiction."

The record shows that the appellant's mother, who is of mature years, is the owner, for life, of a large estate, one-third of which upon the mother's death may therefore any day pass into her hands (R., p. 148). In that event the Court might see fit to modify the decree or to change it altogether, and especially would this be so if the appellee should in anyway lose his ability to meet the terms of the decree. Again, the decree might be modified by the Court because of the changed condition of the parties, who may remarry, the husband's divorce *a mensa et thoro* having ripened into an absolute divorce under the Virginia

law (Sec. 2266 Code of Va.). Still again, the appellant might get married again; and the death of either party would, of course, extinguish the claim. All of these contingencies render it uncertain that the matter in dispute will ever exceed $5,000.00 and make the jurisdictional sum depend upon speculation or possibilities. It is at once, therefore, apparent that the matter here in dispute does not have "any known and certain value" in excess of $5,000.00. And since this Court will neither speculate on the life of the appellee nor presume that the relations of the parties will not change, it has no certain basis upon which to estimate that the matter in dispute will ever exceed $5,000.00.

A case exactly in point is that of *Miles* v. *Miles*, 200 Ill., 524. This case involved the jurisdiction of the Supreme Court of Illinois to review on writ of error a suit for separate maintenance, in which the decree awarded the complainant $30.00 per month alimony and the right to occupy a dwelling with a rental value of $35.00 per month and to pay a solicitor's fee of $200.00. The Court dismissed the writ for want of jurisdiction under a statute of the State of Illinois which gave the right of appeal in all "cases where the sum or value in controversy exceeds $1,000, exclusive of costs." The facts of that case are so like those in the case at bar that we take the liberty of quoting at length from that decision:

> "By the terms of the decree upon the cross-bill, it was ordered that the defendant in error should be allowed, and that plaintiff in error should pay to her, the sum of $30.00 a month in advance, payment to commence on May 1, 1901; and, in addition to said payment of $30.00 a month, defendant in error was to have the right to occupy, rent free, a certain house for a dwelling or home. The Court found that the rental value of the house was $35.00 a month, so that the

award of alimony to the defendant in error was not more than $65.00 per month altogether. The decree upon the cross-bill also ordered, that plaintiff in error should pay to defendant in error, in full of fees for her solicitor up to the time of the entry of the decree, the sum of $200.00, $100.00 thereof on May 1, 1901, and $50.00 per month on the first day of each month thereafter, until the total sum of $200.00 should be paid.

"It is apparent from the foregoing statement, that the amount involved in this suit is not necessarily as large as $1,000.00. Accordingly, the present writ of error must be dismissed for want of jurisdiction in this Court.

"In *Umlauf vs. Umlauf*, 103 Ill. 651, it was held that the right of an appeal from, or writ of error to, the Appellate Court is not given by statute in case of a bill by a married woman for a separate maintenance, where the original decree is for a less amount than $1,000.00, as, where it requires the husband to pay $60.00 a month to the wife for the support of herself and child; and, in the latter case, it was said (p. 656): 'There is no certainty that the present relations between the parties will exist any considerable length of time, and we are aware of no principle that would warrant a presumption the one way or the other upon that subject. A resumption of the conjugal relations, or the death of either party, would operate as an extinguishment of the claim. The fact that the claim might in the course of time,—assuming their present relations to continue,—amount to as much as $1,000.00, we do not regard as sufficient to give this court jurisdicition. Before the right to appeal attaches in a case like this, it must clearly appear from the record there is involved in the controversy, independent of all contingencies, the amount of $1,000.00, exclusive of costs. Testing the present case by this rule, it is clear the appeal does not lie, and will therefore have to be dismissed.' The case of *Umlauf* v. *Umlauf*, *supra*, was followed and endorsed in the subsequent case of *Seelye* v. *Seelye*, 143 Ill. 264,

> which was also a proceeding under the statute to recover separate maintenance and where it was held, upon the authority of the *Umlauf case*, that the amount to be decreed was less than $1,000.00.
>
> "For the reasons above stated, the present writ of error is dismissed."

The appellant, however, relies upon the case of *Smith* v. *Whitney*, 116 U. S. 167, as authority for this Court's jurisdiction in the case at bar. We believe that a consideration of that case will show that the decision therein was based upon an essentially different state of facts. In that case it appeared that Smith, a Pay-Inspector in the Navy, held by appointment of the President and confirmation of the Senate, the office of "Chief of the Bureau of Provisions and Clothing and Pay-Master General in the Department of the Navy," for a term of four years. The Court said:

> "The matter in dispute is whether the petitioner is subject to a prosecution which may end in a sentence dismissing him from the Service, and depriving him of a salary, as Pay-Master General, during the residue of his term as such, and as Pay-Inspector afterwards, which in less than two years would exceed the sum of $5,000.00."

The Court then held that as the—

> "salary during the term of the office would exceed the sum named in the Statute defining its appellate jurisdiction, it had jurisdiction of the case."

It will at once been seen that in the Smith case the Court did not find it necessary to indulge in speculation in order to determine whether or not the value of the matter in dispute equalled the jurisdictional amount, for Smith was the occupant of an office for a definite period of four years to which was attached a definite salary. On the other hand, in

the case at bar, there is no certain period during which the monthly payments for maintenance are to be made, for, as we have already pointed out, the relations of the parties may become entirely changed at any time.

None of the other cases referred to by counsel for appellant in his brief on the question of jurisdiction seem to have any particular relation to the subject, but insofar as they do, they support our contention, and we do not think it necessary to refer to them further.

In view of the foregoing, it is respectfully submitted that the appeal should be dismissed.

II.

Three questions are raised by the specifications of error, discussed in appellant's brief and considered in the opinion of the Court of Appeals:

1. *Is the decree of the Virginia Court, if valid in Virginia, binding upon the parties in the District of Columbia and a bar to the wife's claim for maintenance?*

This question seems to be answered by the decision in the case of *Atherton* v. *Atherton*, 181 U. S., 155, the facts of which are in all respects similar to the facts in the case at bar.

In that case, a divorce was obtained by the husband in Louisville, Kentucky, upon constructive service, on the ground of unlawful desertion by the wife. In a suit brought against him for divorce on the grounds of cruelty, in the courts of New York, in which State she had taken up her residence, the husband pleaded as a bar to her action the decree granted in Kentucky. The Supreme Court of the United States, reversing the Court of Appeals of New York, held that the decree of the Kentucky Court bound the wife

as fully as if she had been served or had appeared in Kentucky; that it established beyond contradiction that she had abandoned her husband precluded her from asserting that she left him on account of his cruel treatment and was enforceable in the State of New York under the full faith and credit clause. The court said (p. 162):

> "The purpose and effect of a decree of divorce from the bond of matrimony by a court of competent jurisdiction are to change the existing status or domestic relation of husband and wife, and to free them both from the bond. The marriage tie when thus severed as to one party, ceases to bind either. A husband without a wife, or a wife without a husband is unknown to the law."

And—

> "The divorce in Kentucky was by the court of the State which had always been the undoubted domicil of the husband, and which was the only matrimonial domicil of the husband and wife." (p. 171.)

The case of *Haddock vs. Haddock*, 201 U. S., 562, is relied upon by the appellant as supporting a contrary view. The Haddock case, however, while holding that mere domicil within a State of one party to the marriage does not give the Courts of that State jurisdiction to render a decree enforcible in other States by virtue of the full faith and credit clause against a non-resident who did not appear and was only constructively served, expressly recognizes and declares as a proposition "irrevocably established" by the Atherton case that—

> "Where the domicil of a husband is in a particular State and that State is also the domicil of matrimony, the Courts of such State having jurisdiction over the husband may, in virtue of the duty of the wife to be

> at the matrimonial domicil, * * * have power to render a judgment dissolving the marriage which will be binding upon both parties, and will be entitled to recognition in all other States by virtue of the full faith and credit clause."

It would seem to appear from these decisions that if a suit is brought at the matrimonial domicil of a husband whose domicil coincides with the domicil of matrimony, the decree obtained is, by virtue of the Constitution, entitled to full faith and credit; but that if the husband removes from the matrimonial domicil and the wife remains, a decree obtained by the husband in his new place of abode is not entitled to full faith and credit.

The decision in the Haddock case expressly disclaims questioning the power of any State to enforce within its own borders the decrees of its courts or to intimate any doubt as to the power of other States to give decrees rendered elsewhere such efficacy as they may be entitled to in view of the public policy of such other States.

In the case at bar, Virginia is the legal domicil of the husband. He was born and reared in Loudoun County, and there is nothing to show that he ever lost the domicil of his birth. The wife's bill does not even allege any other domicil, but merely that she "is not definitely informed as to the defendant's residence, but for several years last past he has lived in said District substantially throughout each year, with the exception of the summer vacation of the District Public Schools, in one of which the defendant is teacher." (R., p. 2.) It does appear that he has always claimed Virginia as his home and treated it as his legal residence; that he is a registered voter of Loudoun County (R., p. 247), and that he served on juries there (R., p. 199); that he owned property there and returned there every summer to spend his vacation as soon as school work

in Washington closed, and went back frequently in the course of the school year to look after his interests there. (R., p. 474.)

In the case of *Downs vs. Downs*, 23 App. D. C., 381, it was held that in suits relating to right of suffrage, divorce, etc., the term "residence" is used in the sense of legal residence, that is, the place or domicil of permanent abode as distinguished from the place of temporary residence, and that the fact that Downs had gone to Maryland for the purpose of exercising the electoral franchise and had been registered there as a voter showed that he had satisfied the Maryland authorities that his residence there was in good faith with the intention of remaining and making it his fixed and permanent home; that he could not claim to be a resident of the State of Maryland for the purpose of voting and a resident of the District of Columbia for the purpose of obtaining a divorce.

If it be true that the husband was a legal resident of Virginia, he could not have procured a divorce *a mensa et thoro* from his wife in the District of Columbia. The fact that his wife might have come to the District did not authorize him to seek in the courts of the District the relief to which he claimed to be entitled.

Section 971 of the *Code* provides:

> "No decree of nullity of marriage or divorce shall be rendered in favor of any one not a resident of the District of Columbia."

Speaking of this section in the Downs case, the Court of Appeals said:

> "By this it is evidently intended and required that residence for the purpose of divorce should in all cases be in good faith, and such residence as the laws of Maryland prescribe as a prerequisite for voting—that

> is, residence with the intention of remaining in the District and making it the party's fixed and permanent home."

The husband could have but one domicil or legal residence, and if Virginia was such domicil it was also the matrimonial domicil of the parties, because the domicil of the wife is the domicil of the husband so long as they live together as husband and wife. The conditions under which the husband proceeded are therefore identical with the conditions which this Court has held gave the court of Kentucky jurisidiction to render in the Atherton case a valid and binding decree which was entitled to full faith and credit in the courts of all the States.

From the foregoing it follows that to determine what effect the Virginia decree has in the District of Columbia, it is only necessary to ascertain the effect of said decree in Virginia.

The Virginia decree provided:

> "That the complainant, Charles N. Thompson, be and hereby is granted a divorce *a mensa et thoro* from the said defendant, Jesse E. Thompson; and that each of them be and he and she are divested of all marital rights in the other's property." (R., p. 25.)

The general effect of a limited divorce is thus stated in 14 *Cyc.*, 729:

> "A limited divorce substitutes for the common law obligation the terms of the judgment which is thereafter the measure of the rights and duties of the parties."

The provisions of the Virginia code affecting decrees for divorce *a mensa et thoro* are as follows:

"Sec. 2263. Upon decreeing the dissolution of a marriage, and also upon decreeing a divorce, whether from the bond of matrimony or from bed and board, the court may make such further decree as it shall deem expedient concerning the estate and maintenance of the parties, or either of them, and the care, custody, and maintenance, of their minor children, and may determine with which of the parents the children, or any of them, shall remain; and the court may, from time to time afterwards, on petition of either of the parents, revise and alter such decree concerning the care, custody, and maintenance of the children, and make a new decree concerning the same, as the circumstances of the parents and the benefit of the children may require.

"Sec. 2264. In granting a divorce from bed and board, the court may decree that the parties be perpetually separated and protected in their persons and property. Such decree shall operate upon property thereafter acquired, and upon the personal rights and legal capacities of the parties, as a decree for a divorce from the bond of matrimony, except that neither party shall marry again during the life of the other.

"Sec. 2266. * * * when three years shall have elapsed after the entering of a decree for a divorce from bed and board, upon any other ground than that of desertion, and in any case where desertion is the ground for divorce when three years shall have elapsed from the time of such desertion, upon application of the party injured, and upon the production of satisfactory evidence, whether taken theretofore or in support of such application, the court may merge such decree for divorce from bed and board into a decree for a divorce from the bonds of matrimony; provided, the court shall be of opinion, from the evidence taken in the suit and in support of the said application, that no reconciliation has taken place, or is probable, and that a separation has continued without interruption since the granting of such divorce."

Under the sections quoted, it seems clear that the decree rendered would preclude the right of the wife to alimony so long as it remains in force.

Furthermore, so long as the finding of wrongful desertion is undisturbed, the courts of Virginia could not allow maintenance to the wife.

In *Harris vs. Harris*, 31 Grat., 13, 17, the court held that when the wife is the offender, she cannot have alimony on a divorce decreed in favor of the husband; that so long as he has committed no breach of the matrimonial duty he is under no obligation to provide her a separate maintenance, for she cannot claim it on the ground of her own misconduct; that if the wife leaves her husband without sufficient cause, the court, upon decreeing the divorce, cannot allow her alimony out of her husband's estate. To the same effect is *Carr vs. Carr*, 22 Grat., 168, and *Latham vs. Latham*, 30 Grat., 338.

The Virginia court therefore having jurisdiction to pass a binding decree, and the effect of that decree in Virginia being to bar the wife's right to maintenance, it follows—that the decree is a bar to her suit for maintenance in the District of Columbia.

It is to be further noted that the laws of Virginia have made ample provision for the protection of every right of the wife and of the child born since the separation. As to the child, *which the appellee has never refused to support*, the court upon application may, as appears from Section 2263 quoted above, at any time make such decree as the circumstances of the parents and the benefit of the child may require.

With respect to the rights of the wife, *Sec. 3233 of the Code of Virginia* provides as follows:

> "Any unknown party, or other defendant, who was not served with process, and did not appear in the case before the date of such judgment, decree, or order, or the representative of any such, may, within three years from that date, if he be not served with a copy of such judgment, decree or order, more than a year before the end of the said three years, and if he be so served, then within one year from time of such service, petition to have the case reheard and may plead or answer, and have any injustice in the proceedings corrected."

If, therefore, she sustained any injustice, by reason of the fact that she was an absent defendant and did not appear, she could at any time within three years have had said decree set aside by showing that it was inequitable or unjust to her.

2. Is the Virginia decree invalid in that State because of insufficiency of the affidavit filed as the basis of the order of publication.

Objection is made to the affidavit upon which the publication was issued because based upon information and belief. The language of the affidavit is as follows:

> "Charles N. Thompson, plaintiff, this day made oath before me in said office, that Jessie E. Thompson, defendant in the suit aforesaid, is not a resident of the said State, as he is informed and verily believes." (R., p. 20.)

Section 3230 of the Virginia code provides:

> "On affidavit that a defendant is not a resident of this State * * * an order of publication may be entered against such defendant."

That the affidavit is in all respects sufficient to form a basis for the publication is believed to be fully supported by the authorities.

In addition to the authorities cited in the opinion of the Court of Appeals (R. pp. 500-501) we refer also to the following:

> "The following rule concerning the sufficiency of affidavits in other cases is held applicable to suits for divorce: If there is a total want of evidence upon a vital point in the affidavit, the court acquires no jurisdiction by publication of summons; but where there is not an entire omission to state some material fact, but it is insufficiently set forth, the proceedings are merely voidable." (7 Ency. Pl. & Pr. 110.)
>
> "In most jurisdictions it is held that the mere fact that some of the averments in the affidavit for publication are made on information and belief, will not render the affidavits insufficient." (17 Ency. Pl. & Pr. 60-61.)

In *Adam vs. Hudson*, 98 Michigan, 51, it is said:

> "An order for the appearance of a defendant in a chancery suit is the result of an adjudication that the statutory cause exists, and while the affidavit upon which the order is made must make a *prima facie* case, the degree of proof requisite is not the subject of review, if it can be said that such a case is made."

In the case of *Pennoyer vs. Neff*, 95 U. S., 714-721, the Supreme Court of the United States in passing upon an objection made to a judgment rendered upon constructive process, the objection being that the affidavit upon which the publication was based was insufficient, said:

> "The majority are of opinion that, inasmuch as the statute requires, for an order of publication, that certain facts shall appear by affidavit to the satisfaction of the court or judge, defects in such affidavit can only be taken advantage of on appeal, or by some other direct proceeding, and cannot be urged to impeach the judgment collaterally."

In *Long vs. Fife*, 45 Kan., 271, it was held, that where an affidavit for publication inferentially, but insufficiently, sets forth a material fact which ought to be expressly stated, the affidavit, if otherwise good, will be held to be merely voidable, and if the fact inferentially and insufficiently stated was in existence at the commencement of the action, the trial court even after judgment may allow the affidavit to be amended concerning the matter so inferentially and insufficiently stated, and the affidavit so amended will relate back to the commencement of the action.

In *Belmont vs. Cornen*, 82 N. Y., 256 it was held that, where an affidavit contained certain allegations tending to show that efforts had been made to find the defendant within the State, and that he was not there, it gave jurisdiction to the court, or judge, to pass upon the question of the sufficiency of the proof; and if so satisfied, neither the order for publication nor the judgment based thereon can be impeached collaterally.

In *Rowe vs. Palmer*, 29 Kan., 240, where an affidavit for service by publication states that service of a summons cannot be made upon the defendant within the State, and that the action is for foreclosure of a certain mortgage upon real estate, but fails to state or show that the defendant is a non-resident of the State, or that he is in any manner attempting to avoid the service of summons, it was held that such an affidavit is defective because of said failure, and that a service made thereon is voidable; but that it is not void if it is sufficient in every other respect.

See, also:

Smith vs. Smith, 3 Oregon, 363.
Ligare vs. R. Co., 76 Cal., 610.
Lawson vs. Moorman, 85 Va., 880.
Harris vs. Claflin, 36 Kan., 543.
Briton vs. Larson, 23 Neb., 806.
Fulton vs. Levy, 21 Neb., 478.

3. Did the giving of personal notice in the District of Columbia vitiate the constructive notice of publication and render the decree void in Virginia.

It is objected—and upon this objection the trial court based its decision refusing recognition to the Virginia decree—that the actual personal notice of the pendency of the suit, which was given to the wife, was irregularly given.

In addition to proceeding against the wife by publication, in order that she might not fail to have actual notice of the proceedings, a copy of the summons was sent to the District of Columbia, where she was living, and delivered to her here. This summons was not delivered to her until after the return day fixed in the notice of publication and in the summons as well.

Section 3232 of the Virginia code provides:

> "Personal service of the summons *scirefacias* or notice may be made by any person not a party to or otherwise interested in the subject matter in controversy, on a non-resident defendant out of this State, *which service shall have the same effect and no other, as an order of publication duly executed.* In such case, the return must be made under oath, and must show the time and place of such service, and that the defendant so served is a non-resident of this State."

Section 3232 also further provides:

> "When such order shall have been so executed, if the defendants against whom it is entered * * * shall not appear within fifteen days after the completion of the execution thereof, the case may be tried or heard as to them."

It is not denied that under the notice of publication the wife was given all the notice required by the Statute.

Without actual notice to her, the court was authorized to proceed. Can it be said that an irregular giving of actual notice of the pendency of the suit would defeat the jurisdiction which the court had already acquired by constructive notice? The trial court took the view that the plaintiff in the Virginia case, by having this notice delivered to the wife after the date on which she should have appeared under the notice of publication, dug a pitfall for her and misled her, because of the fact that she probably never saw the notice of publication at all. It is submitted that the opposite view expressed by the Court of Appeals is the more reasonable and is the view supported by the authorities.

In the *7th Ency. of Pl. & Pr.*, it is said (p. 109):

> "Although the summons or notice has been published, personal notice may be given to the non-resident defendant. The personal service is not abandonment of notice by publication."

The case of *Burnes vs. Burnes*, 61 Mo. App., 612, where in addition to giving notice by publication, the plaintiff also gave personal notice, the defendant made the same contention that is made here, to-wit, that the plaintiff abandoned the service by publication by substituting the personal notice, and that the latter superceded and invalidated the former. The Court said:

> "Thus to supplement the constructive service or notice by publication with that of actual notice would seem to be commendable rather than reprehensible, especially so in a case of this kind, and ought not to have the effect to invalidate or supercede the first service."

In *Dresser vs. Wood*, 15 Kans., 344, it was held that where service of summons was made on the defendant and the plaintiff afterwards procured a second service to be made, the procuring of a second service is not so far an invalidation or waiver of the first service as to allow parties or third persons to treat it as a nullity.

III.

In the event this Court shall take jurisdiction of the case and shall reverse the finding of the Court of Appeals that the Virginia decree is a bar to the wife's action, then inasmuch as that Court has not passed upon the husband's contention that aside from the Virginia decree the wife is not entitled upon the testimony in the case to separate maintenance, we assume that the case would be sent back to that Court to pass upon the testimony.

Since, however, the appellant contends that it is necessary for this Court to consider the testimony and devotes a considerable part of her brief to its discussion (pp. 12 to 17) we submit the following to show that—

The wife failed upon the testimony offered to establish that she was entitled to maintenance.

The burden is upon a married woman to show that she is justified in refusing to live with her husband in order to charge him with the duty of supporting her while living apart from him.

9 *A. & E. Ency. of Law*, 847.
2 *A. & E. Ency. of Law*, 97, 98.

The husband is obviously a man of good standing, both in Virginia, where he was born and reared, and in the District of Columbia, where he has been teaching the public schools since 1895, being now principal of the Jefferson School, one of the largest in the city. (R., p. 296.)

The excuse offered by the wife for refusing to live with the husband is his cruelty to her. She charges that from the day after their marriage, December 7, 1905, until the time of their separation, June 13, 1907, he was guilty of continuous cruelty of the most revolting character—cruelty that was brutal, coarse, and criminal. The charges contained in the bill while lacking in precision, and vague and general in their nature, may be summarized as follows:

1. Violent and abusive language and assault upon her on the day after the marriage.

2. Continued abuse and violence, consisting of chocking her on repeated occasions, throwing her down and bruising her about the body. (Par. 4.)

Breaking open doors of rooms in which she took refuge in the winter of 1906-1907, at 1006 B Street, S. W., and dragging her violently down the stairway—making his violence a source of alarm to the neighbors. (Par. 4.)

4. Cursing members of her family, including her dead father, and on such occasions often whipping her and striking her in the breast with his fist. (Par. 4.)

5. Manifestation of extreme anger towards her because of her pregnancy, and the demand that she engage in criminal acts to prevent the birth of the child; cursing, choking, and beating, bruising her and knocking her down, while in that condition. (Par. 5.)

6. Driving her while sick from one part of the house to the other, and on one occasion in very cold weather forcing her to leave the house in her night clothes. (Par., 5.)

7. Acquiescing in her being ordered out of their house at 1006 B Street, S. W., by his mother on the 13th and 14th of June, 1907. (Par. 5.)

8. Excessive use of intoxicating liquors frequently preceding cruel conduct, which, however, arose out of his deep-rooted and abiding hostility toward her.

It would seem that a fair balance of testimony should be required to establish the truth of such charges as have been made by the wife in this case.

Movements of couple after marriage.—On the evening of their marriage they went to Baltimore and the following day to New York, where they remained for several days. On their return from New York they spent one night at the National or Metropolitan Hotel, and then went to the Logan Apartment House. (R., p. 114.) They then went to Hamilton, where they remained until the death of her father on December 23d, when they came back to Washington. Her father was buried on the 27th; they returned to Hamilton on the same day and remained there about three weeks. On their return to Washington they spent one night on Fourteenth Street between K and I, and then went to the Logan, 13th and Iowa Circle, where they lived until June, 1906. (R., p. 134.) In June, 1906, the wife went to Atlantic City; the husband came for her after his school had closed, stayed two or three days and brought her back to Washington. They spent one night on Pennsylvania Avenue; she was at her mother's for two days at 1124 12th Street, N. W.; and then went to Hamilton, Va., arriving about July 1st. She remained at Hamilton until August 14, 1906. (R., p. 139.) She then came back to Washington, went to Atlantic City, after spending one night at Alexandria, to stay with her mother. (R., pp. 141, 145.)

Her mother brought her back to Linganore, Md., and left her there on September 29th or 30th, where she remained until October 8th (R., p. 152), when she came back to her husband. They boarded with a Mrs. Hall, 222 Eight Street, S. W., until about the middle of December, 1906. (R., p. 320.) On the date last mentioned they took the house at 1006 B Street, S. W. (R., p. 322), where they lived

until the final separation. She was in Providence Hospital in February, 1907, for about ten days. (R., p. 329.) After she left the hospital her husband sent her to Atlantic City, where she remained until the 15th of March, 1907. (R., p. 332.) She finally left him the following June.

Analysis of Testimony.—An analysis of the testimony, it is submitted, will show that no witness ever saw the husband mistreat his wife in any way, and with one single exception, which will be considered by itself, her case as to cruelty on the part of her husband rests upon her own uncorroborated statements.

1. We may consider, first, the uncorroborated testimony as to the cruelties practiced upon her.

(a) On page 113 of the Record, she describes the cruelty which she says was practiced upon the very next day after they were married: Without any fault on her part, his knocking her on the floor, taking her by the throat, saying every *horrible thing* he could to her; she escaped him, ran into the bath room and locked the door and remained there two or three hours until he came and threatened to break the door. "This ill treatment," to use her own words, "and treatment just like it, along the same lines, continued the whole time" they were in New York on their wedding trip. (R., p. 114.)

(b) On one occasion, while they were living at the Logan, she says he knocked her to the floor and, in doing so, knocked her into a rocking-chair and bruised her; that she had a black eye for a week and left him and went to Alexandria over night, getting back the next day for fear he would come to Alexandria and make a scene. (R., p. 117.)

(c) At 1006 B Street, S. W., he returned, she says, to ill treatment and made the most horrible scenes. She took refuge in different rooms. He broke open the doors and dragged her down the steps, and when he had dragged her half way down, threw her to the bottom. Would break

open doors like a wild man, compelling her to run out in her night clothes and to take refuge on one occasion in the vestibule of Mrs. Burr's house. (R., p. 121).

(d) On the night of June 12, 1907, he threw her upon the floor so violently that her knees were all bruised; choked her, saying she ought to be killed; fussed and cursed until four or five o'clock in the morning; and when she pretended to be asleep he would go over and take her by the throat and choke her and curse her and tell her she had to listen to him. (R., p. 124.)

(e) She became pregnant about the 15th of March. He said he would rather have a child by a "nigger" or the lowest thing in the gutter. He beat her, took her by the throat, and chocked her till she told him if they had a child it would be marked. Said there should not be a child. Had a colored woman to come to bring on her sickness; she sent the colored woman away. She came again, said Thompson had sent her and told her to use other means, and she sent her away; but he still insisted that something be done. (R., pp. 122, 123.) (See, also, Rec., p. 344.)

(f) Another charge which runs through her whole testimony is that he constantly indulged in the grossest profanity, and was given to cursing the members of her family, especially her dead father; that while they were riding to her father's funeral, he read the will and cursed her father, for making such a will (R., p. 114); that he said her family, mother and father, were a crew of blackmailers and the lowest scum in existence (R., p. 122); that when she left him at Hamilton on August 14, 1906, he was walking up and down, cursing and shrieking about everything, "cursing my dead father and my mother, and my brother and the whole family and myself included." (R., p. 145.) (See, also, R., pp. 178, 179.) Many other instances will be noted in the course of her testimony.

(g) On pages 124, 125 of the record she details the scene

in which it is alleged that Thompson's mother, an old woman seventy-three years old, and who had just entered the house of the parties for the first time, being invited down to see her daughter-in-law (R., pp. 188, 189-389), ordered Mrs. Eliot (Mrs. Thompson's mother) out of the house, and when told that Mrs. Jessie Thompson had sent for her mother, ordered her out. She says that her husband then also ordered her out and that when she came back the next day to pack her trunk his mother again ordered her out and that Thompson joined his mother in the order. She says that thereupon she packed her trunk, having already finished packing her wedding presents; took such furniture as she wished, and left never to return. The same scene is described on cross-examination. (R., pp. 174, 175, 176.)

It is doubtful, under the decision of the Court of Appeals in the case of *Lenoir vs. Lenoir*, 24 App. D. C., 160, whether this testimony is admissible at all; but if it be admissible, then the proof of all the foregoing acts of alleged cruelty, as well as of many others, both in word and in deed, vaguely and generally appearing in the torrent of the wife's testimony, rests entirely upon the testimony of the wife, herself.

The fact that the husband denies these charges in his answer and in his testimony would seem to be sufficient refutation thereof.

But, *even if undenied, the testimony it is believed would have every slight probative force; for*

(a) The testimony is inherently improbable. It can be reconciled with truth and experience on no theory other than that the husband is a monster—a theory utterly at variance with all the known facts of the case.

(b) Her whole testimony is colored by the grossest exaggeration— not only in the instances cited above, but her whole narrative abounds in superlatives.

She said that the Logan apartment house was more of a

boarding house, and that her life was utterly horrible there (R., p. 116); that when he was taking her to the hospital for treatment, in February, 1907, just before entering the hospital he told her they thought she was going to die and asked her to give him back the milling stock he had given her the fall before, so that her people would not get it (R., p. 122); that he told her that he was the best man living, "better than Jesus Christ" (R., p. 129); that the boarding house on Fourteenth Street, between I and K, where they spent one night was a horrible place (R., p. 134); that he treated her "most horribly" at Hamilton, meaning by "most horribly," "my speaking to him in the presence of other people, not only by ourselves but with others"—and his not replying when she addressed him (R., pp. 140, 141.) (Her friend, Eula Sparks, who was visiting her at this time, notwithstanding many marks of attention he showed, thought he *utterly neglected* his wife, because she heard her address a remark to him when he left the room and he did not answer her (R., p. 106); "that when Mr. Fairbrother, who was Thompson's supervising Principal, went to Maine, which is a prohibition country, "he had a barrel of whiskey sent there." (R., p. 401). Many other similar statements might be cited. (See, especially, p. 430.)

(c) Her testimony, in nearly all instances, where there are other witnesses, is in conflict with such witnesses. Her so-called rebuttal testimony contradicts practically every witness called by the husband. The testimony is in conflict with that of the husband and his mother as to what happened when she was finally leaving the house on B Street (R., pp. 387, 389), and she does not call her mother, who was present, to corroborate her statements. She contradicts the witnesses, Herndon, Henry P. Thompson, Fairbrother, Trotter, Hall, Mrs. Burr, Dr. Green, Laycock, Dr. Keene, Mr. Leith, Mrs. Williams. (R., pp. 391-430.)

As an illustration of her contradiction of other witnesses the account by others of the disturbance which she made by screaming at the Herndon home at Hamilton and her own account of the same incident may be specially noticed. Her husband says that on that occasion she had been sick; that the doctor had been there once or twice, and that as he was going in he met her coming down the steps in her night clothes, saying she was going to her father and going right away; that he picked her up and carried her back in her room and that she hollered and yelled and created so much excitement that a number of men came running to the house; that he went out and told them that there was nothing the matter; that that afternoon she got up and that they were walking about the yard, and she was apologizing and was very sorry for the scene she had made (R., p. 306). Mr. Herndon, at whose house they were living says that he was summoned from the store to the house and when he got there found Mrs. Thompson "hollering" and talking very loud; that after the course of two or three hours she calmed down, came out in the yard and apologized for her actions and the disturbance she had created (R., p. 196). Mr. Laycock says that he saw her after the occurrence, as reported, that they were walking about on the lawn and there was nothing to show that there had been any unpleasantness between them. (R., p. 238). The witness, Leith, testifies to the same effect on page 248; and Mrs. Herndon said that she had apparently been very ill that whole morning and had been attended by a doctor; that she remembered the scene that was created there; that she went to the room at the time it occurred; that she found her there in her night clothes, threatening to pack her trunk and leave, and Thompson pleading with her not to leave (Rec., p. 473.) Mrs. Thompson, who had been examined in chief and cross-examined in greatest detail about the cruelty that had

been practiced upon her by her husband at Hamilton, and had failed to mention any act of physical abuse, said on rebuttal discribing this incident that Thompson had come into her room and found her trying to lock the trunk, and that he flung her back against the bedstead so violently and treated her so roughly that she screamed and her screaming caused the people to collect outside of the house. (R., p. 430.)

A further illustration, which has already been mentioned, is the conflict between her testimony as to what occurred on the 13th of June, 1907, when she says she was ordered out of the house by Thompson and his mother, and the testimony of Mrs. Marian Thompson (R., pp. 187, 188), and that of the husband (R., pp. 337 to 339). It will be noted that while her testimony is in material conflict with that of her husband and his mother, she did not call her mother, Mrs. Eliot, who was present at the occurrence, to corroborate her testimony.

(d) The statement and complaints said to have been made by the wife from time to time to various witnesses, with a single exception, never charged physical abuse of any kind before the spring of 1907.

In her talks with Mr. Fairbrother, who was the intimate friend and counsellor of both, she charged him with drinking and not furnishing her with enough money, but didn't charge him with physical abuse. And, as a matter of fact, Fairbrother knew he was not drunk at the time the charge was made (R., p. 209); and was never drunk when under the supervision of the witness; and as to spending money from what he could find out, it seemed to him that she was getting more than Mrs. Fairbrother. (R., p. 210).

In her conversation with Mrs. Williams, in which she appeared to have unbosomed herself, she did not intimate that Thompson beat her or had ever beaten her or cursed her

father, although she said she was very unhappy; that he had grown indifferent to her; that he did not give her money to run the house as he should; that he was a drunkard; and that he did not like her mother. (R., pp. 259, 260).

In her conversation with Green, who was an intimate friend of the family, and who had worked many years for her father, and who had been requested by Thompson to get her to return to him; she charged Thompson with drinking and talking about her father, but did not tell him that he had whipped her on their wedding tour or at the Logan or at Hamilton. (R., pp. 293 and 295.) It was only just before she left him in the summer of 1907, that she came to his store and said that her husband had had her in the furnace room with her head up against the wall and his hand around her throat, threatening to strike her. (R., p. 295.)

In her conversation with her cousin, Dr. Johnson Eliot, on the occasion when he talked to her at the request of Thompson, with a view to getting her to return to him from Atlantic City, the only charge she made was that he was drunk on the wedding trip, that he was cross, unbearable, and that nothing seemed to please him. She did not mention physical cruelty as her grounds for not returning. (R., p. 386.)

A striking thing about the charge she made to this cousin, a physician, in the summer of 1906, while at Atlantic City, was that Thompson had tried to force medicine upon her to break her pregnancy. When she told him this he told her he would not advise her what to do about returning to her husband, but that she must advise with her mother and her people (R., p. 386). Yet she testified herself that the only time she was ever pregnant was when it occurred immediately after her return from Atlantic City, March 15, 1907. (R., p. 441.)

If at that time she made a false charge to her cousin, is it not possible that she might later have made similar false charges after she became actually pregnant?

Prior to the spring of 1907, so far as the record disclosed, she had never intimated to any person that he was guilty of cruelty to her person. The single exception was in the case of Eula Sparks, a particularly interested witness, who said that on the occasion when she left him for one night at the Logan, that she told her that Thompson had struck her. (R., p. 102.) On page 178 she said on cross-examination: "My body was covered with bruises and everyone saw it," and then said, "I don't mean everyone. I mean two or three people saw me who were perhaps in the same room with me." But she refuses to give the name of any person who had seen such bruises and not ever her mother has corroborated her testimony.

It is submitted as a striking and impressive fact in this case that while she was leaving her husband repeatedly and refusing to return to him, and making various kinds of charges against him in justification of her conduct, that she on no occasion urged as a reason for not returning the cruel physical treatment which she now says had been inflicted upon her from the very beginning of their married life.

(e) The fertility of her imagination and the bitterness with which she attacked all who opposed her is apparent from her testimony in rebuttal. (R., pp. 387-451.) (Not even her lawyer could prevent her from having her own way as to the manner in which she should testify (R., p. 400.) It will be sufficient to point out a few of many instances as illustrations:

It has already been pointed out how she charged an assault upon her at Hamilton on the occasion when the scene was made at the Herndon house, about which she had been silent in her examination in chief and on cross-examination.

She adds a further description to a scene at the Jefferson School, where he locked the door, maltreated her, threw her against the piano and nearly broke her back. (R., p. 423). As to the occasions of her leaving him at Hamilton, she was questioned in the utmost detail on her cross-examination, but in her rebuttal testimony she gives another reason, about which she had theretofore been silent. "His sister (Mrs. Herndon) was furious because I had packed my trunk, she said, without consulting her, and she said very harsh and unkind things to me and finally ordered me out of the house and told me never to put my foot in it again," and Thompson was there at the time. (R., p. 389.)

Her testimony abounds in mean and petty statements about her husband; e. g., as in contradicting his testimony that he kept a room at his sister's at Hamilton, she says that the sister had said that sometimes when there he had to occupy a room with the colored servant girl (R., p. 393); that he took public property away from the Jefferson School, piano covers (R., p. 390), brooms, and chairs (R., p. 395); that in New York where they seemed to have been busy seeing the sights of the city (R., p. 449) he took her into a vaudeville theater on Broadway which was a cheap place which they had to leave. (R., p. 417.)

And the witnesses for her husband likewise did not escape her bitterness. Mr. Fairbrother, a Supervising Principal of the City Schools, she would have such a toper that he bought his whiskey by the barrel (R., pp. 401, 402); as to Fraser (notwithstanding according to his testimony and that of the architects that the walls between his houses were fully 13 inches) he was so mean, according to the statements of her husband, he would not put an extra brick in the houses if he could help it, leaving the walls very thin (R., p. 414); and Green was a woman beater. (R., p. 417.)

2. We come next to the testimony of the plaintiff which is attempted to be corroborated.

Attempts were made to corroborate her testimony as to what happened at 1006 B Street, S. W., on the occasion about the middle of April when her mother was sent for.

She says: "At the end of April, one evening, Mr. Thompson so beat me and choked me that the neighbors heard it and sent for my mother, who came there, and I went away with her. That scene was a most terrible one. He used every vile imprecation toward my family and myself. I had to return to him. I had no home but his. I thought that most probably I was going to become a mother and the place for me was with my husband if I could possibly stay. I tried to stay. I returned. His ill-treatment continued." (R., p. 123.) On cross-examination, she says he became abusive because she suggested that they go across the park to get something to eat. He took her by the throat; treated her in a vile, abusive manner, and cursed her, and when she got back to the kitchen, he took her by the throat, banged her up against the wall by the kitchen door, finally worked around by the door that leads into the furnace room, took her back into the furnace room between the Gerdes residence and the Thompson residence, where the maltreatment took place, and he then locked the door so she couldn't run away; choked her again, took her by the throat, banged her against the wall, and jammed her against both walls in the kitchen (R., p. 165).

Upon this scene alone must rest her whole case so far as corroboration of her testimony by witnesses is concerned. She seeks corroboration in the testimony of Mr. and Mrs. Gerdes and of Mr. and Mrs. Hood, who claim to have been in the house next door, 1004 B Street. The substance of their testimony is that they thought from what was happening that a deadly assault was being committed upon her;

that they heard screams, cries for help and requests not to be hurt proceeding from Mrs. Thompson (R., p. 27). Gerdes thought Mrs. Thompson was in imminent danger of losing her life (R., p. 35). The testimony of Mrs. Gerdes is to the same effect (R., pp. 51-52-53), and would indicate that the disturbance was sufficient to have aroused the neighborhood and probably destroyed the furniture of the house, if not to injure the house itself. The testimony of Mrs. Hood (R., p. 68) attempts to become somewhat more definite than the testimony of Gerdes and his wife. She testifies Thompson had his wife in the basement holding her by the throat and ramming her head against the wall, and that she saw a shadow or reflection from the kitchen on the fence in the back yard. (R., pp. 68, 72.) The witness Hood testified that he heard a terrific racket and screaming up stairs, and thumping noise, "rough house, generally speaking," coming apparently from the parlor floor, but that it had attracted no special attention before one of the young ladies, who was upstairs, came down (R., pp. 83, 84). Mrs. Hood stated that the young lady came down and said that Thompson was killing his wife (R., p. 68).

They all agreed that Mrs. Eliot (Mrs. Thompson's mother) was called by telephone to come to the house and that she arrived upon the scene in from one-half to three-quarters of an hour after being called. Their testimony also tended to show that when Mrs. Eliot arrived, both before and after she obtained admission to the house, that Thompson abused her with most profane oaths, called her all kinds of vile names, such as prostitute, whore, etc. Gerdes said that Thompson was talking very loud, even after Mr. Fraser, the landlord, was called and went into the house, but that he heard little or nothing of what was said. He heard Mrs. Eliot say that she had come for her daughter, and all he heard Thompson say with respect to his wife was just about

the time Mrs. Eliot was leaving with her daughter, and was the objectionable language as to being the father of a negro (R., p. 28). According to the testimony of the other three, all the abusive language appears to have been used soon after the arrival of Mrs. Eliot and before she got into the house (R., pp. 52-59-69).

A careful reading of the testimony of these witnesses taken even apart from all the other testimony in the case affords an excellent example of how interested witnesses by the aid of hearsay and imagination may build up and testify to a whole story upon the slightest bits of actual knowledge.

Mrs. Gerdes and Mrs. Hood are sisters. The Gerdes had been acquainted with Mrs. Thompson's family for many years. Gerdes claims to have been an intimate friend of her father's. (R., p. 31.) Mrs. Hood at one place says that she saw through a crack in the fence a shadow on the back fence in the Thompson yard which showed her how Thompson was abusing his wife in the kitchen or furnace room (R., pp. 73, 76); at another place she appears to have seen the shadows from the sitting room (R., p. 68). The testimony of Trotter (R., p. 268) and Thompson (R., p. 334) shows that it was about dinner time and that is was not dark. The witness Hood also says he looked in the back yard at the same time his wife looked; said he saw nothing; there was no light showing through the back of the Thompson house; that it was closed up tight (R., p. 84). He also says that he heard a sound as if someone was being jammed against the wall (R., p. 83). Mrs. Thompson says there was no light in the kitchen; that there was a light in the hall and dining room (R., p. 413), and the architects show that the only possible way that any shadow could have ever been thrown on the back yard fence would have been from the light in the center of the kitchen when the kitchen door was

opened; that such a shadow could not then have been thrown by persons against either of the kitchen walls, even after dark. (Testimony of Jones, Rec., p. 250; Avery, Rec., p. 256.)

It is interesting to note how the witness, Mrs. Hood, reached her conclusion, that Thompson was ramming his wife's head against the wall, as appears from R., p. 71:

> "Q. Well, how can you tell that her head was being jammed against the wall?
>
> "A. Well, I will put it body, then. Well, her body may have been jammed against the wall, and I suppose her head must have been the most convenient part, and if he had her by the throat he certainly could have jammed her, and he had her by the throat, and she was screaming as if he was choking her, so it must have been her head that he was ramming.
>
> "Q. Do you say that because of the muffled sounds you heard?
>
> "A. Yes, and the jamming noise.
>
> "Q. And you predicate all that testimony as to choking her and having her by the throat and jamming her head on the sounds her heard?
>
> "A. Yes; I don't know what else I could do because I tell you he had her up against the wall and ramming her there somewhere.
>
> "Q. From the sounds you heard?
>
> "A. Yes, sir.
>
> "Q. And that is the sole basis of your testimony about the jamming and choking, etc.?
>
> "A. Yes, sir; and she screaming murder and hollering for help."

The extreme interest, bias, partisanship and lack of frankness of the witnesses are also apparent.

Mrs. Gerdes stated that although she had known Mrs. Thompson since she was a little girl, she had never spoken to her until about two weeks before testifying, when, after hearing that Mrs. Thompson "was going to open a case,

she thought she would assist her and sent for her." She had never discussed the case with her sister or husband, but knew her sister would testify, and merely brought her husband to the lawyer's office without being asked to do so to see if he would be any good in the case (R., pp. 55 and 56). She said that Mr. Thompson was not willing for his wife to leave with her mother, because "if she had left, he would not have had anyone to beat," and that "from the racket he made, he could not have done much more than fight" all the time (Rec., p. 59); that Mrs. Thompson was taken to the Hospital in February because he had near about beat her to death; that witness supposed he had beat her so much, he had to carry her there to get her mended up (R., p. 60). Although all she knew she had learned from hearing through the walls, she was not even willing to admit that Mrs. Thompson could have given her husband offense without the witness knowing it (R., p. 62), and she said that it would take her "two, three, four months to tell all" she knows about the Thompson's troubles (Rec., p. 63); that she looked and watched for Thompson every evening so that she could hear a row when he got in (R., p. 64); that women and men all over the neighborhood and people out of town discussed Thompson's character and his matters, but she refused to give the name of a single person she had ever heard mention the matter. (R., pp. 65-66.)

A similar condition of bias and prejudice prevailed with respect to Mrs. Hood, who was convinced that Mrs. Thompson had been so completely used up as to testify that when she went away with her mother that night "she walked with her mother at a very slow gait as though she were being taken to the hospital, and if she were taken to the hospital, I thought they would never bring her back alive" (R., p. 79); she thought Mrs. Thompson "was the most abused woman that was ever put on earth" (R., p. 78).

It will be noticed that Mrs. Gerdes and Mrs. Hood say

that the disturbance was in the basement wh[illegible]rs. Thompson says it was, but that Gerdes and Hood say the disturbance seemed to have been on the floor above (R., pp. 41, 83). It will also be noticed that Gerdes says that when he heard the disturbance the family was on the floor above, while the others say they heard it when in the basement, about dinner time (Rec., p. 41). It will be noticed that Mrs. Hood's testimony is strikingly similar to the testimony given by Mrs. Thompson on cross-examination; that Mrs. Hood says (R., p. 70) it seems that he had her head ramming it against the wall, and it would seem reasonable that Mrs. Hood and Mrs. Thompson had, at least, talked with each other about what had happened.

A peculiar circumstance is found in the fact that Mrs. Thompson and Mrs. Gerdes were both unwilling to recognize that they had any acquaintance on B Street; that Mrs. Thompson should deny any acquaintance with Mrs. Hood. Mrs. Gerdes said that she had known Mrs. Thompson all her life but had never spoken to her until two weeks before testifying, when she sent for her in order to help out. Mrs. Thompson said she did not know the Gerdes people at all while she lived on B Street (R., p. 162), but that when she was leaving on April 14th Mrs. Gerdes was at the window and called out: "Mrs. Thompson, if you try to get maintenance from Mr. Thompson, I can be a witness in the case, I have overheard a great deal" (R., p. 160), and that when the case was coming on she hunted up Mrs. Gerdes and told her she was wanted by the lawyer, and Mrs. Gerdes told her that Mrs. Hood and her husband could also be witnesses; that all she had to do was to call Mrs. Hood by telephone and they would all come (Rec., p. 161).

Mrs. Thompson further says "that she had no idea what they were going to testify to when they came to the first session of testimony, and that they had never told her

anything about the matter before they went upon the stand (R., p. 160). Gerdes says that when he was taken to Mr. Lewin's office, before he testified, he didn't even tell Mr. Lewin about the case. He merely told Mr. Lewin if there was anything he could say, he would say it, and that Mr. Lewin didn't even ask him about the case (R., p. 49).

Miss Hutchinson, who lived at the Gerdes house, 1004 B Street, who also testified on behalf of Mrs. Thompson, said that she met Mrs. Thompson at the Gerdes residence; that Mrs. Thompson visited there, and that Mrs. Hood introduced her to Mrs. Thompson on the steps of the Gerdes house where Mrs. Thompson was stopping, talking to the family (R., pp. 88-89). As before pointed out, Gerdes said that he had known Mr. and Mrs. Eliot for 18 years (R., p. 31).

Why this effort on the part of Mrs. Thompson and these witnesses to conceal their acquaintance and association with each other? Would the consciousness on their parts that they had been collaborators in bringing about trouble and preparing the monstrous charges against him have made them desirous of concealing their relations?

It is evident that there had been discussion in the Gerdes house before this occasion about calling up Mrs. Eliot. Mrs. Hood said she had told Mrs. Gerdes before that if she was ever at the house when any trouble came up she was going to call up Mrs. Eliot (R., p. 54). Mrs. Thompson had prior to this time requested neighbors to call up her mother and ask her to interfere (R., p. 408). The Gerdes doubtless knew the dislike that existed between Thompson and his mother-in-law. Gerdes said, that although he thought Mrs. Thompson was in imminent danger of losing her life, he called Mrs. Eliot from her home in the Northwest and thought she "was a great deal better than a police officer" (R., p. 37).

Immediately after the testimony of the Hoods and Gerdes had been given, Mrs. Eliot, the mother-in-law, brought suit against Thompson for slander, claiming $20,000 damages. (R., p. 159). But although she had been so active in stirring up trouble and was an alleged eye-witness to the cruelties charged, she did not take the stand on her daughter's behalf.

There were three other witnesses to part or all the disturbance, we are now considering, against whom the charge of bias or interest cannot be brought. One of these witnesses, Miss Mary J. Hutchinson, was called by Mrs. Thompson herself. She testified as follows:

> "It was the latter part of April; it was right after dinner; I went to my room and I heard a scream and put my head out of the window, and I heard Mrs. Thompson pleading to Mr. Thompson to 'please don't' several times, like she was in distress. * * * I went down stairs and reported it to Mrs. Gerdes." (R., p. 87.)

She said that Mrs. Hood, after that, phoned to Mrs. Eliot and that Mrs. Eliot came down and took Mrs. Thompson home with her that night; said she was there when Mrs. Eliot came and that Mrs. Eliot went to the front door of Mrs. Thompson's home, and that she and her sister went out soon after Mrs. Eliot arrived. (R., pp. 91 and 92.) Said she saw the Hoods and Gerdes in the dining room as she went out; that at the time she told Mrs. Gerdes what she had heard; Mrs. Gerdes was on the steps coming up from the dining room and evidently had not heard the noise at all (R., p. 94); that she immediately went back to her room and all had quieted down in the Thompson house (R., pp. 93, 94); and that she told everything that occurred that night so far as she knew while at the house (R., pp. 91, 93).

Could anything *be in more striking contrast* with the highly colored testimony of the Hoods and Gerdes than this testimony of Miss Hutchinson?

William H. Trotter, telegraph operator, who was occupying the back room on the second floor of the Thompson house, was in his room at the time of the disturbance, with his door partly opened, and was in a position to hear what was happening; that he heard Mrs. Thompson down stairs talking in a very loud, excited voice, sort of hysterical like, and Thompson pleading with her, trying to calm her and begging her not to make a scene. Then he heard a door slam, heard Thompson pleading with her to open the door, and then heard a racket or noise like something heavy fall on the floor. The witness went to the back window and saw Mrs. Thompson in the yard with her foot on the step-ladder, saying, if he didn't leave her alone, she would climb the ladder and go over the roof of the shed. This was about 6.30 or 7.00 o'clock. He could see her distinctly. Thompson came up on the second floor and she came up stairs (R., pp. 268, 269). A little later, he heard the front door open and a lady's (Mrs. Eliot's) voice.

"Q. What did he say to her?

"A. First she said something to him.

"Q. What did she say to him?

"A. She said, she wanted to know what all this meant, and what he was doing to her daughter. Mr. Thompson said: 'Mrs. Eliot, you mean what is your daughter doing to me.' He said to her: 'You have made 30 years of unhappiness in your own home, and now you are trying to break up my own home.'

"Q. Just detail, now, the conversation, as it occurred.

"A. Mr. Thompson then said to her——

"Q. What did she say to him when Mr. Thompson said that to her?

"A. She wanted to know what he was doing to her daughter, and trying to murder her. Mr. Thompson told her that he wished she would never come in his home again; that she had made hell in her own home for 30 years; and she was not satisfied until she did the same in his home. About that time some gentleman came in.

"Q. Who was that gentleman, do you know?

"A. Mr. Thompson called him Mr. Fraser.

"Q. Now, did you hear Mr. Thompson say on that occasion to Mrs. Eliot, or this woman whom he was talking to at the front door, that 'I would as soon have a child or baby by a negro as by that thing,' or words to that effect?

"A. No, sir; I didn't hear anything like that at all.

"Q. If such words as that had been spoken by Mr. Thompson to Mrs. Eliot, or this woman who came to the door, as you have spoken about, could you have heard them?

"A. I certainly could have.

"Q. Did you hear Mr. Thompson say to this woman who came to the door, or to Mrs. Eliot, that she was a whore, and her mother was a whore, and so on, words to that effect?

"A. I most certainly did not.

"Q. If he had used such language as that to her, were you in a position to have heard it?

"A. I was." (Rec., p. 269).

After Mr. Fraser came in he heard Mrs. Eliot tell Mrs. Thompson to get her clothes on and came with her. He went out a little later and found Mr. Thompson standing on the corner talking with Mr. Fraser. (R., p. 270). Thompson was not excited on this occasion, but spoke in a natural tone of voice, and Mrs. Eliot's voice was rather loud and excited. He heard Mrs. Eliot say to Fraser, "Take this, Mr. Thompson might kill himself." (R., p. 271.)

George E. Fraser, the landlord, who came in in the midst of the supposed disturbance, said that he was called by Mrs.

Hood and told that Thompson was beating his wife and that he was wanted to come over. Mrs. Elliot appeared in the door soon after he arrived on the front sidewalk, and told him that Thompson was drunk and was beating his wife, and that she was upstairs locked in the room afraid to come out. Mr. Thompson then appeared on the scene and told him that the woman was irrational and didn't know what she was talking about. Thompson appeared almost instantly after he saw Mrs. Eliot. He didn't appear excited, and when he stated that Mrs. Eliot didn't know what she was saying and that he would explain the matter later, Mrs. Eliot handed him a pistol saying she was afraid he would kill Jessie. He took the pistol, put it in his pocket, and when he got home and examined it found it was unloaded. Thompson appeared to be perfectly sober and witness was near enough to him to have smelled his breath. A little while afterwards he saw Thompson going by and went down to the edge of the sidewalk and talked with him. (R., p. 277.) Witness didn't see Mrs. Thompson in the house nor say a word to her while there on this occasion. (R., p. 278.)

The testimony of Miss Hutchinson, Mr. Trotter and Mr. Fraser is entirely consistent with the explanation of the incident made by Thompson on pages 333 to 336 of the record, and shows, we believe, conclusively, that the incident was nothing more than one of the periodical outbreaks which Mrs. Thompson was accustomed to make, and that the serious trouble growing out of the situation was brought on by the mother-in-law.

3. The attitude of the parties toward each other, the manner in which they discharged their marital duties, and which it was that was desirous of preserving the marriage status, will clearly appear from a review of the various instances under which he was deserted by his wife.

It will probably not be contended by counsel for Mrs.

Thompson that as a wife she was very helpful to her husband. Her parents had not thought it a wise marriage. According to her own testimony her father had told Thompson that he had better marry a different kind of a girl than she was, and she had heard people call her an heiress, and will get one-third of her father's estate upon the death or re-marriage of her mother. (R., p. 148). Dr. Green said that her father opposed the marriage and thought she would make a fit wife for nobody but a millionaire; said he never could do anything with her and so told Thompson personally. (R., p. 290).

Mr. Laycock, Mr. Thompson's partner, says that on one occasion when he was invited to spend the night at the Thompson home in the city that she left before they got through supper for a church meeting, leaving Thompson to clear up the table and put away the dishes, that in the morning Thompson got up and got breakfast for him. (R., pp. 234, 235.)

Witness Fraser said that when he went in one Sunday morning to see about a door that would not shut in the back-yard, he saw a fowl in a pan and heard someone say: "Now, Charlie, you have that ready. I am going to church and you have it ready when I come back." (R., p. 278.)

Mrs. Burr said she had seen Thompson bringing his meals in and cooking them and that she (Mrs. Thompson) said she wanted a servant, and heard her say on several occasions that she was not going to cook herself. Had often seen Thompson working around the house, sweeping, dusting and washing dishes. (R., p. 277.)

Fairbrother said that he had heard some talk about her saying, "I will not get up and get breakfast for any man," and that he went and talked the matter over with her and urged her to get up and prepare his breakfast, to tell him good-bye when he left and meet him at the door when he

came in, and that he said to her: "Things don't look well, Miss Jessie. I can't see the handiwork of the wife. Things are not set up here yet—it is not home;" and understood from her that she would commence that way at once. (R., pp. 207, 208.)

It is believed that it will be equally clear that Thompson did his full part at least to supply her physical needs. He apparently took her to good boarding places in the city while they boarded and when they took a house he selected a house of pleasant location fronting on the grounds of the Department of Agriculture. Mr. Fairbrother thought that it was in a very good condition for beginners (R., p. 207); that Thompson was constantly trying to fix things up and making things pleasant about the house and making himself a very helpful man about the house. (R., p. 210.) See also testimony of Mrs. Thompson (R., p. 406). It appears not only from Thompson's own testimony but from the testimony of Mr. Laycock (R., p. 238) and others, as well, that he did all he could to make her enjoy herself while they were at Hamilton, providing her with a horse and buggy, inviting her friends up there, providing her with the best room in the Herndon house, allowing her to buy goods at the store (R., p. 237); at the home of Mr. Hall she was provided with the best rooms in the house, took meals with the family, had a horse and buggy provided for her to go wherever she pleased, and he took her out frequently driving and seemed in every way to amply provide for her. (R., pp. 286, 287.) He cooked her meals and took them to her when she was sick. (R., p. 399.) At the drug store she was free to buy everything she wished and Thompson almost every evening was in the store getting ice cream, candy, soda or something of that kind. (R., pp. 293, 294.) According to her own testimony she could buy whatever she wished out of the grocery store in the neghborhood at 1006 B

Street. (R., p. 169.) In short, there is no evidence at all of any neglect whatever to supply her physical needs.

On the contrary it appears that he showed her the attentions that are usually considered the evidence of devotion. On her birthday he sent a beautiful bracelet. (See R., p. 319.) At the hospital he sent her flowers and called, according to her statements, at least eight out of the ten days that she was there. (R., p. 444.) At Hamilton, when she asked it, he went out and bought her the share of milling stock (R., p. 171); in June of 1906, he sent her to Atlantic City, and when school closed went for her to bring her back (R., p. 134); and in March, 1907, he again sent her to Atlantic City. She says he carried the locket with her picture and when he lost it said he had lost his mascot. (R., p. 399.) So that from the whole record and from her own testimony, she apparently fared as well, to say the least, as the average woman who marries a school teacher.

The testimony shows that in the period extending from the time of their marriage, December, 1905, to June, 1907, that she left him on at least five different occasions.

She *first left him* at the Logan, went to Alexandria and spent the night and came back the next day without letting him know where she was (R., p. 117). The witness, Eula Sparks, says that he was very anxious for her to return on that occasion. Thompson says that he did not sleep any that night but was worrying about her that night and all next day. (R., p. 304.)

She *next left him* on August 14, 1906, at Hamilton, Va. None of the witnesses from Hamilton, including his mother, sister, brother-in-law, brother and partner, knew of any reason whatever for her leaving him. She says that she had intended to go only to Alexandria for a day and only changed her mind on the day she left because of what some members of his family had said about her on that day. She

says she heard his sister say: "Poor Charlie, when he comes home at eleven or half-past eleven at night, tired out from night school, Jessie raises Cain if he does not put on his good clothes and take her down town somewhere to supper;" and also heard his brother say that they ought to be separated. Thereupon she decided to go away with Eula Sparks and leave him. (R., pp. 140-42.)

According to the testimony of Mr. Herndon (R., p. 198) as well as of Mrs. Herndon, she had carefully prepared in advance for leaving by putting her silver-ware and wedding presents in her trunk, and that Thompson did all in his power to keep her from going is clear. (R., p. 204.) (See also Testimony of Thompson, R., p. 310.) He (Thompson) followed her to Washington (R., p. 311) and tried to persuade her to return to him. Eula Sparks says he met them on the street and pleaded with her to come back and that he was most solicitous and anxious for her to return (R., pp. 109, 110.) Through Mr. Williams he sought to intercept her at the Station in order to find out where she was going so that he could write to her at Atlantic City. (R., pp. 265, 266.) Called up Dr. Green, who was in Atlantic City, by long distance telephone and had him to go to see her. He saw her cousin, Dr. Eliot, who was on his way to Atlantic City, and travelled with him to Baltimore, and asked him to try to get her to come back. (R., p. 314). He wrote to her—tried to blame himself for everything, real and imaginary, that he could think of; and used every influence possible to get her to return.

It will be noticed, according to her own testimony, that it was upon her mother's invitation and at her mother's suggestion that she went to Atlantic City and that it was upon her mother's advice that she did not return, her mother telling her that she thought if Thompson did not have her for a few months he would think more of her when she re-

turned, and that it was not until after Mr. Thompson promised to do *the right thing* in October that the mother advised her to go back to him. (R., pp. 148, 149.) That Mrs. Thompson was as ready to appeal to her mother as her mother was to interfere, appears from her own testimony where she says she went over to Mrs. Burr and asked her to 'phone and ask the mother to come down and look out for her. (R., pp. 407, 408). Mrs. Burr says that on this occasion Mrs. Thompson came to her house about half-past seven or eight o'clock very much excited and wanted her to phone to her mother to come right down, that she was not going to stay with Mr. Thompson and wanted her mother to take her home; that Mrs. Thompson said that a friend of hers was there and that Mr. Thompson had been relating to that friend something about her father's papers, and it had made her mad and that she was not going to stay with him and wanted her mother (R., p. 299.)

Thompson's attitude toward his wife and his efforts to get her to return is shown by the letters found on pages 315, 319, 348 of the Record. He sent her money, presents, drove across the country twenty-eight miles to meet her; found that she had completely changed; her attitude was fierce. (R., p. 317). She finally agreed to come back only on condition that he would turn over to her the milling stock because she said that if things were not to her liking and she had to leave again, she wanted something to live on. (R., pp. 318, 171, 172.) So he gave her the stock and she came back in October and they went to boarding at the residence of Mr. Hall, 221 Eighth Street, S. W.

At Hall's, because he was not anxious to go to housekeeping she "got mad" and said that she would go to housekeeping if he didn't. She "got mad" and *left him the third time*, and was gone two or three days. (R., p. 321.) He called her up by long distance telephone and got Hall to go and get her.

Mr. Hall says that Thompson did not want to go to housekeeping and that he asked one or two people to speak to her to show her the disadvantages of starting to housekeeping at that time, but she said Thompson had promised to go to housekeeping and that if he did not rent the house and go to housekeeping that she was going to leave him, that she would not stay in Hall's house or anybody else's house, and that going to housekeeping was the only solution. (R., p. 220.) Hall talked over the matter with Mrs. Thompson several times because he felt very kindly toward both and would have done anything he could to bring them closer together; she was away two or three days, and the witness thought she went to Alexandria and Thompson did not know where she was. (R., p. 227.)

About the time they were having the difficulty about this question of money, he wrote her a letter which is found on pages 323 and 324 of the Record, setting out his condition, his salary, his debts and obligations, sending her the $20 and asking her to try to see how she could manage on that for the time. In reply he received a letter (found at the bottom of page 324), in which she announces that she is going to leave him again, and which clearly indicates that the whole matter of complaint she had at that time was the amount of allowance he was willing to give her.

Thompson says that she demanded $30.00 a month for spending money. He asked her to get along on $20.00 until he got some of his debts paid off, and sent her four $5.00 bills, which she refused to receive. (R., p. 322.) He then agreed to give her $25 a month spending money. Thompson gave in and said they would go to housekeeping if that would be the source of happiness. He rented the house at 1006 B Street, S. W., where he appears to have done most of the work. (R., pp. 326 to 328.)

After they went to housekeeping *she left him the fourth*

time soon after the middle of December. She left on this occasion because she didn't think he gave her money enough. (R., p. 322.) He got Hall to go for her again. Hall called her up by 'phone and got her to meet him (Hall) at the Raleigh Hotel for lunch and she agreed to go down to the Jefferson School. The whole difficulty seemed to be a question of money. She said she would not stay with him unless he would furnish her money as follows: $25.00 a week for market money; $35.00 a month spending change, to employ a servant and pay the other household expenses, which were rent, gas bills, fuel bills and such as that—an aggregate far in excess of his income. She said unless she got that amount of money that she would not live with him. (R., pp. 222, 223), but she finally went back.

She was sick in February and he sent her to the hospital for ten days and after her return from the hospital to Atlantic City. While there he wrote her letters and sent her telegrams. (R., pp. 332, 329.) She returned about the middle of March.

After the occurrence in April of the scene testified to by the Gerdes, in which her mother, Mrs. Eliot, came down and took her away, her mother again came and took her away in June, bringing about the final separation.

The Trial Court in its opinion criticizes Thompson for the language he used toward his mother-in-law at the time of the final separation. (R., p. 485.) It is obvious that there was no great love between Thompson and his mother-in-law and what he said to his wife on this occasion about going with her was merely repeating things which his wife had told him. He felt the mother-in-law was responsible, to a large extent, for her daughter's conduct; he knew she had taken her away from him in the summer of 1906 and kept her away for the period of two months. She had taken the daughter away again in April and now in the presence

of his own mother, who had been invited to visit them, she had come to take his wife away again. His feeling toward the mother-in-law is shown in the letter beginning on page 315, where he says: "As for your mother and of what I know and of what you have said of her actions in the past, and of what your father, who was a good man, has said about her and not only to me but to others, I naturally take no stock in it at all." Mrs. Thompson had told Thompson's mother, of whom she had seemed very fond and between whom letters and correspondence often passed, that her own mother never had treated her kindly, that she had never acted toward her as a mother ought to and that she had taken away from her money that her father gave her to buy her wedding clothes with. (R., p. 191.) Dr. Green said: "There never was a man any more in love with a woman than he (Thompson) was in love with his wife that I ever saw. He was desperately in love with her for many years before they were married and after they were married, and I believe he is in love with her today." (R., p. 290.) She says that he hated her and told her the day after they were married, told her continuously that he hated her and told her the day after he married that he wished he had laid his head on a railroad track. (R., p. 113.) His conduct in this case and his repeated and unceasing efforts to get her to return to him seems hardly reconcilable with any other theory than that he was intensely and devotedly attached to his wife. When the mother-in-law, who despised him, who had caused him so much trouble before, and for whom he had absolutely no use, was again breaking up his home in the presence of his own mother, it would seem that there might be some palliation for his repeating to his wife the things which she had said to him and especially when it was repeated not for the purpose of wounding his wife's feelings but for the sole purpose of dissuading her from leaving him and following her mother.

His conduct in instituting proceedings in Virginia and pushing them to a speedy termination also seems to be found worthy of criticism by the Trial Court. The question arises: What was he to do? He sought to get her to return to him (R., p. 340); he wanted her back and was ready to receive her. If his contention was true that she had deserted him unjustifiably after he had done all in his power to provide for her comfort and meet her needs, was he compelled to accede to every demand she chose to make upon him under such circumstances? She demanded that he pay her $100.00 a month. The demand was peremptory—"$100.00 or file a bill." (R., p. 347.) He fully realized what such a course meant to him, the notoriety that would attach thereto, the irreparable injury that it would do him, and rather than have their matters in Court, he was willing, even under those circumstances, to make contribution to her. He offered $50.00, $60.00 a month but she was unyielding. (R., pp. 429, 185.)

She filed her bill—the bill, in this case, charging him with acts of cruelty which, if proved, stamp him as a monster unworthy of a place in civilized society, much less to hold the principalship of a school in which a thousand children are subject to his supervision. Under such circumstances what was left for him to do? Having his domicil in Virginia he could have no relief here because this Court could not grant him a divorce. If he was entitled to divorce, as he conceived himself to be, he could seek it no where else than in Loudoun County.

What has been the course of his wife since instituting the proceedings in this cause? Not content with the notoriety thrust upon him by the atrocious charge contained in her bill and the litigation incident thereto, she filed another suit against him for $70,000—a suit, which, under the law, it was impossible for her to maintain and which was held

bad on demurrer both by the Courts below and by this Court. She was not satisfied with that proceeding. As soon as the first session of testimony in this cause had closed her mother filed another suit against the defendant for $20,000 for alleged slander, the publicity of which she says her mother learned of when the Gerdes' and Hood testimony was given on her behalf. (R., p. 159.)

And it has not been enough for her to proceed against him in the courts. She went to members of the Board of Education, to the President of the Board, to the Superintendent of Schools and told them the most important parts of the story she had told in this case. She told them that he got drunk; that he beat her; that he cursed her; that he cursed her dead father and that he cursed her mother. (R., pp. 154, 155). It is believed that her course of action has had but one object and end—namely, his dismissal from the public schools, and the complete ruin of his reputation and standing in this community, and that such a course cannot commend her to the favorable consideration of a court of conscience.

It is respectfully submitted that the judgment of the Court of Appeals appealed from should be affirmed.

A. E. L. Leckie,
Joseph W. Cox,
John A. Kratz, Jr.,
Attorneys for Appellee.